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M E M O R A N D U M

TO: Interested Parties

FROM: Colorado Uniform Consumer Credit Code
Telephone: (303) 866-4494
E-mail: uccc@state.co.us

RE: House Bill 11-1206
Amendments to the Colorado Uniform Debt Management Services Act

Colorado's Uniform Debt Management Services Act ("DMSA") was amended by House Bill 11-1206 and took effect on July 1, 2011. Some of the key changes resulting from the bill are described below:

Registration Requirements:

- Attorneys in an attorney-client relationship seeking an exemption from the DMSA must be licensed to practice law in the State of Colorado. § 12-14.5-202 (10)(A)(i), C.R.S.
- Certified Public Accountants in an accountant-client relationship seeking an exemption from the DMSA must be certified or authorized by the State Board of Accountancy to provide accounting services in Colorado. § 12-14.5-202(10)(A)(ii), C.R.S.
- The exemption from the DMSA for financial planners has been repealed.
- Third parties providing debt management services on behalf of an attorney or CPA are not exempt from the DMSA. The attorney and Certified Public Accountant exemption only applies to the attorney, CPA and their employees. § 12-14.5-202(10)(B), C.R.S.
- Applicants are no longer allowed to provide debt-management services to Colorado consumers prior to the approval of their registration.
- The requirement for evidence of a one million dollar insurance policy has been repealed.
- The accreditation requirement for providers has been repealed.
- The certification requirement for a provider's counselors or debt specialists has been repealed.

- The option to obtain a certificate of insurance as a substitute for a surety bond is repealed.

Customer Agreements and Fees:

- The amount, percentage, or method of determining the amount of all fees to be paid by the individual must be disclosed in a clear and conspicuous manner and using only the terminology contained in section 223. § 12-14.5-219(a)(6)(B), C.R.S.
- In addition to disclosing the amount of each payment, the date on which each payment is due, and an estimate of the final payment date, schedules of payments must include an estimate of the total of all payments to be made under the plan. § 12-14.5-219 (a)(6)(C), C.R.S.
- In a clear and conspicuous manner, debt settlement agreements must include: an estimate of the amount of time necessary to achieve the represented results; if the plan includes a settlement offer, the time by which the provider will make a bona-fide offer to each of them and the amount of money or percentage of each outstanding debt that a consumer must accumulate before the provider will make a bona-fide settlement offer; and if the provider requests or requires the consumer to place funds in an insured financial institution, a statement that the individual owns the funds in the account, and that the funds may be withdrawn at any time without penalty other than those funds earned by the provider pursuant to § 12-14.5-222 (h). § 12-14.5-219 (a)(6)(C.5) (i), (ii), and (iii), C.R.S.
- As all settlements must now be approved by the consumer, power of attorneys authorizing debt settlement companies to accept settlements are no longer allowable. Therefore the requirement for debt settlement providers to limit a power of attorney is repealed.
- Debt-Settlement providers are not prohibited from requiring consumers to place funds in an account other than the consumer's existing bank account, as long as: the account is held at an insured bank; the consumer owns the funds and is paid interest accordingly; the entity administering the account is not owned, controlled by, or in any way affiliated with the debt-management provider; the entity administering the account does not give or accept any money or other compensation in exchange for business referrals involving the provider; the consumer may withdraw from the plan at any time without penalty, and receive all funds in the account, other than fees earned in compliance with the DMSA. § 12-14.5-202(21)(B)(i), (ii), (iii), (iv) and (v) C.R.S.
- The fee cap of 18% of enrolled debt for new debt settlement agreements is repealed. However, providers may not request or receive payment of any fee, until and unless: the provider has settled the terms of at least one debt; the consumer has made at least one payment pursuant to the settlement agreement; the fee bears the same proportional relationship to the total fee for settling the enrolled balance, or is a percentage of the amount saved at settlement. § 12-14.5-223(d)(2)(A) (i), (ii) and (iii), C.R.S.
- As advance set-up fees for debt settlement agreements (previously limited to 4% of enrolled debt) are no longer allowable, the requirement that debt settlement providers refund 65% of the set-up fee at cancellation/ termination is repealed.

Prohibited Acts and Practices:

- A provider may not settle a debt without the consumer's express agreement at the time to the terms of the offer. Each settled debt must be agreed to individually by the consumer; blanket

authorizations covering more than one settlement offer are no longer acceptable. § 12-14.5-228(a)(2), C.R.S.

- If a provider represents that it is a not-for-profit agency, but does not have tax exempt status, certain disclosures must be made. § 12-14.5-228(a)(14), C.R.S.

To help ensure compliance with the revised law, a copy of both the revised DMSA and the revised registration application is available on our website at:
www.coloradoattorneygeneral.gov/dm

An Act

HOUSE BILL 11-1206

BY REPRESENTATIVE(S) Gardner B., Barker, Bradford, Kerr J., Labuda,
Liston, Stephens;
also SENATOR(S) Bacon, Newell, Nicholson.

CONCERNING THE "UNIFORM DEBT-MANAGEMENT SERVICES ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-14.5-202 (2) (B) (iv), (6), (7), (10), and (21), Colorado Revised Statutes, are amended, and the said 12-14.5-202 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-14.5-202. Definitions. As used in this part 2, unless the context otherwise requires:

(2) "Affiliate":

(B) With respect to an entity, means:

(iv) ~~Subject to adjustment of the dollar amount pursuant to section 12-14.5-232 (f);~~ A person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year or a person that owns more than ten percent of, or an individual who

is employed by or is a director of, a person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year;

~~(6) "Certified counselor" means an individual certified by a training program or certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services.~~

~~(7) "Certified debt specialist" means an individual certified by a training program or certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to debtors as part of the initial enrollment for debt-management services offered by a person that does not hold money for individuals with whom agreements are made.~~

(10) (A) "Debt-management services" means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not include:

~~(A) (i) Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state; OR~~

~~(B) (ii) Accounting services provided in an accountant-client relationship by a certified public accountant licensed CERTIFIED OR AUTHORIZED BY THE STATE BOARD OF ACCOUNTANCY to provide accounting services in this state. or~~

~~(C) — Financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the administrator, by rule, determines are:~~

~~(i) Licensed by this state;~~

~~(ii) Subject to a disciplinary mechanism;~~

~~(iii) Subject to a code of professional responsibility; and~~

~~(iv) Subject to a continuing-education requirement.~~

(B) THE EXEMPTIONS IN SUBPARAGRAPH (A) OF THIS PARAGRAPH (10) DO NOT APPLY TO ANY PERSON WHO DIRECTLY OR INDIRECTLY PROVIDES ANY DEBT MANAGEMENT SERVICES ON BEHALF OF A LICENSED ATTORNEY OR CERTIFIED PUBLIC ACCOUNTANT IF THAT PERSON IS NOT AN EMPLOYEE OF THE LICENSED ATTORNEY OR CERTIFIED PUBLIC ACCOUNTANT.

(12.5) "INDIVIDUAL" MEANS A NATURAL PERSON.

(21) (A) "Trust account" means an account held by a provider that is:

~~(A)~~ (i) Established in an insured bank;

~~(B)~~ (ii) Separate from other accounts of the provider or its designee;

~~(C)~~ (iii) Designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider; ~~or its designee;~~ AND

~~(D)~~ (iv) Used to hold money of one or more individuals for disbursement to creditors of the individuals. ~~and~~

~~(E)~~ ~~Not an account held by a person other than a provider or an affiliate.~~

(B) FOR A PLAN UNDER WHICH CREDITORS WILL SETTLE DEBTS FOR LESS THAN THE PRINCIPAL AMOUNT OF THE DEBT, NOTHING IN THIS ACT PROHIBITS A PROVIDER FROM REQUESTING OR REQUIRING AN INDIVIDUAL TO PLACE FUNDS IN AN ACCOUNT, SEPARATE FROM THE INDIVIDUAL'S THEN-EXISTING BANK ACCOUNT, TO BE USED FOR THE PROVIDER'S FEES AND FOR PAYMENTS TO CREDITORS OR DEBT COLLECTORS IN CONNECTION WITH THE DEBT MANAGEMENT SERVICES, IF:

(i) THE FUNDS ARE HELD IN AN ACCOUNT AT AN INSURED FINANCIAL INSTITUTION;

(ii) THE INDIVIDUAL OWNS THE FUNDS HELD IN THE ACCOUNT AND IS PAID ACCRUED INTEREST ON THE ACCOUNT, IF ANY;

(iii) THE ENTITY ADMINISTERING THE ACCOUNT IS NOT OWNED,

CONTROLLED BY, OR IN ANY WAY AFFILIATED WITH THE PROVIDER;

(iv) THE ENTITY ADMINISTERING THE ACCOUNT DOES NOT GIVE OR ACCEPT ANY MONEY OR OTHER COMPENSATION IN EXCHANGE FOR REFERRALS OF BUSINESS INVOLVING THE DEBT MANAGEMENT PROVIDER OR PLAN; AND

(v) THE INDIVIDUAL MAY WITHDRAW FROM THE DEBT MANAGEMENT PLAN AT ANY TIME WITHOUT PENALTY, AND IMMEDIATELY RECEIVES ALL FUNDS IN THE ACCOUNT, OTHER THAN FEES EARNED IN COMPLIANCE WITH SECTION 12-14.5-223, AS REQUIRED BY SECTION 12-14.5-226.

SECTION 2. The introductory portion to 12-14.5-205 (b) and 12-14.5-205 (b) (4), Colorado Revised Statutes, are amended to read:

12-14.5-205. Application for registration - form, fee, and accompanying documents. (b) ~~Subject to adjustment of dollar amounts pursuant to section 12-14.5-232 (f);~~ An application for registration as a provider shall be accompanied by:

~~(4) Evidence of insurance in the amount of one million dollars:~~

~~(A) Against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;~~

~~(B) Issued by an insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization;~~

~~(C) With a maximum deductible of five thousand dollars;~~

~~(D) Insuring the applicant for claims made by individuals in this or any other state, who have agreements with the applicant, and this state, as their interests may appear.~~

SECTION 3. Repeal. 12-14.5-206 (8) and (9), Colorado Revised Statutes, are repealed as follows:

12-14.5-206. Application for registration - required information. An application for registration shall be signed under penalty of false

statement and include:

~~(8) Evidence of accreditation by an independent accrediting organization approved by the administrator;~~

~~(9) Evidence that, within twelve months after initial employment, each of the applicant's counselors or debt specialists becomes certified as a certified counselor or certified debt specialist;~~

SECTION 4. 12-14.5-207, Colorado Revised Statutes, is amended to read:

12-14.5-207. Application for registration - obligation to update information. An applicant or registered provider shall notify the administrator within fifteen days after a change in the information specified in section 12-14.5-205 ~~(b)(4)~~ or (b) (6) or section 12-14.5-206 (1), (3), (6), (12), or (13).

SECTION 5. The introductory portion to 12-14.5-209 (d), Colorado Revised Statutes, is amended to read:

12-14.5-209. Certificate of registration - issuance or denial. ~~(d) Subject to adjustment of the dollar amount pursuant to section 12-14.5-232 (f),~~ A board of directors is not independent for purposes of subsection (c) of this section if more than one-fourth of its members:

SECTION 6. Repeal. 12-14.5-210 (c), Colorado Revised Statutes, is repealed as follows:

12-14.5-210. Certificate of registration - timing. ~~(c) Until such time as an initial application is approved or denied, the applicant may continue to provide debt-management services, but a denial terminates any further power to provide debt-management services unless approved by the administrator;~~

SECTION 7. 12-14.5-211 (b), (c) (1), (c) (3), and (c) (5), Colorado Revised Statutes, are amended to read:

12-14.5-211. Renewal of registration. ~~(b) The administrator shall mail an application for renewal to each provider at least sixty days prior to~~

~~the expiration date of a registration:~~

(c) An application for renewal of registration as a provider shall be in a form prescribed by the administrator, signed under penalty of false statement, and:

(1) Be filed ~~no fewer than thirty and no more than sixty days before~~ the registration expires;

(3) Contain ~~the matter required for initial registration as a provider by section 12-14.5-206 (8) and (9)~~ and a financial statement, reviewed by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application; except that the third renewal after initial registration and every fourth renewal thereafter shall be audited rather than reviewed;

(5) Supply evidence of insurance in an amount equal to the larger of one million dollars or the highest daily balance attributable to residents of Colorado in the trust account required by section 12-14.5-222 during the six-month period immediately preceding the application:

(A) ~~Against risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;~~

(B) ~~Issued by an insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization;~~

(C) ~~With a maximum deductible of five thousand dollars; and~~

(D) ~~Insuring the applicant for claims made by individuals in this or any other state, who have agreements with the applicant, and this state, as their interests may appear.~~

SECTION 8. The introductory portion to 12-14.5-213 (b) and 12-14.5-213 (c), Colorado Revised Statutes, are amended to read:

12-14.5-213. Bond required. (b) ~~Subject to adjustment of the dollar amount pursuant to section 12-14.5-232 (f); A surety bond filed pursuant to subsection (a) of this section shall:~~

(c) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider AND THE SURETY shall ~~immediately~~ notify the administrator IMMEDIATELY and, within thirty days after notice by the administrator, THE PROVIDER SHALL file a new or additional surety bond in an amount set by the administrator. The amount of the new or additional bond shall be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, THE SURETY SHALL PROVIDE WRITTEN NOTICE OF THE TERMINATION TO THE ADMINISTRATOR IMMEDIATELY, AND the provider shall immediately file a new surety bond in the amount of fifty thousand dollars or other amount determined pursuant to subsection (b) of this section.

SECTION 9. Repeal. 12-14.5-214 (a) (1), Colorado Revised Statutes, is repealed as follows:

12-14.5-214. Bond required - substitute. (a) Instead of the surety bond required by section 12-14.5-213, a provider may deliver to the administrator, in the amount required by section 12-14.5-213 (b), and, except as otherwise provided in paragraph (2) of this subsection (a), payable or available to this state and to individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this part 2:

(1) ~~A certificate of insurance issued by an insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization; or~~

SECTION 10. 12-14.5-216, Colorado Revised Statutes, is amended to read:

12-14.5-216. Customer service. A provider that is required to be registered under this part 2 shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a ~~certified~~ counselor, ~~certified~~ debt specialist, or customer-service representative, as appropriate, during ordinary business hours.

SECTION 11. The introductory portions to 12-14.5-217 (a) and (b), Colorado Revised Statutes, are amended to read:

12-14.5-217. Prerequisites for providing debt-management services. (a) Before providing OR CONTRACTING TO PROVIDE debt-management services, a registered provider shall give the individual an itemized list of goods and services and the charges for each. The list shall be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:

(b) A provider may not furnish OR CONTRACT TO FURNISH debt-management services unless the provider, through the services of a ~~certified~~ counselor or ~~certified~~ debt specialist:

SECTION 12. 12-14.5-219 (a) (6) (B), (a) (6) (C), (a) (6) (E), (a) (6) (G), (d) (1) (A), (d) (1) (B), and (e), Colorado Revised Statutes, are amended, and the said 12-14.5-219 (a) (6) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

12-14.5-219. Form and contents of agreement. (a) An agreement shall:

(6) Disclose:

(B) IN A CLEAR AND CONSPICUOUS MANNER, the amount, PERCENTAGE, or method of determining the amount, of all fees, individually itemized, to be paid by the individual, USING ONLY THE TERMINOLOGY CONTAINED IN SECTION 12-14.5-223;

(C) The schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, ~~and~~ an estimate of the date of the final payment, AND AN ESTIMATE OF THE TOTAL OF ALL PAYMENTS TO BE MADE UNDER THE PLAN;

(C.5) IN A CLEAR AND CONSPICUOUS MANNER, THE FOLLOWING INFORMATION:

(i) THE AMOUNT OF TIME NECESSARY TO ACHIEVE THE REPRESENTED RESULTS;

(ii) IF THE PLAN INCLUDES A SETTLEMENT OFFER TO ANY OF THE INDIVIDUAL'S CREDITORS OR DEBT COLLECTORS, THE TIME BY WHICH THE

PROVIDER WILL MAKE A BONA FIDE SETTLEMENT OFFER TO EACH OF THEM AND THE AMOUNT OF MONEY OR THE PERCENTAGE OF EACH OUTSTANDING DEBT THAT THE INDIVIDUAL MUST ACCUMULATE BEFORE THE PROVIDER WILL MAKE A BONA FIDE SETTLEMENT OFFER TO EACH OF THEM; AND

(iii) IF THE PROVIDER REQUESTS OR REQUIRES THE INDIVIDUAL TO PLACE FUNDS IN AN ACCOUNT AT AN INSURED FINANCIAL INSTITUTION, THAT THE INDIVIDUAL OWNS THE FUNDS HELD IN THE ACCOUNT, THE INDIVIDUAL MAY WITHDRAW FROM THE PLAN AT ANY TIME WITHOUT PENALTY, AND, IF THE INDIVIDUAL WITHDRAWS, THE INDIVIDUAL MUST RECEIVE ALL FUNDS IN THE ACCOUNT, OTHER THAN FUNDS EARNED BY THE PROVIDER IN COMPLIANCE WITH SECTION 12-14.5-222 (h);

(E) If the provider holds money on behalf of the ~~debtor~~ INDIVIDUAL, each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

(G) If the provider holds money on behalf of the ~~debtor~~ INDIVIDUAL, that the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;

(d) An agreement shall provide that:

(1) The individual has a right to terminate the agreement at any time, without penalty or obligation, by giving the provider written or electronic notice, in which event:

(A) The provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt; AND

(B) ~~With respect to an agreement that contemplates that creditors will settle debts for less than the principal amount of debt, the provider will refund sixty-five percent of any portion of the set-up fee that has not been credited against the settlement fee; and~~

(e) ~~An agreement may confer on a provider a power of attorney to settle the individual's debt for no more than fifty percent of the actual balance of the debt owed at the time of settlement. An agreement may not confer a power of attorney to settle a debt for more than fifty percent of that~~

~~amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement shall provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement for more than fifty percent of the actual balance of the debt owed at the time of settlement.~~

SECTION 13. The introductory portion to 12-14.5-220 (b), Colorado Revised Statutes, is amended to read:

12-14.5-220. Cancellation of agreement - waiver. (b) An agreement shall be accompanied by a SEPARATE form that contains in bold-faced type, surrounded by bold black lines:

SECTION 14. The introductory portion to 12-14.5-223 (d) and 12-14.5-223 (d) (1) (A), (d) (2), (d) (5), and (f), Colorado Revised Statutes, are amended to read:

12-14.5-223. Fees and other charges. (d) ~~Subject to adjustment of dollar amounts pursuant to section 12-14.5-232 (f),~~ The following rules apply:

(1) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:

(A) A fee not exceeding fifty dollars for consultation, obtaining a credit report, AND setting up an account; ~~and the like;~~ and

(2) If an individual assents to a plan that contemplates that creditors OR DEBT COLLECTORS will settle debts for less than the principal amount of the debt:

(A) ~~A provider may charge total fees in an amount not to exceed eighteen percent of the principal amount of the debt, which shall include, subject to section 12-14.5-219 (d), a fee for consultation, obtaining a credit report, setting up an account, and the like, in an amount not exceeding four percent of the principal amount of the debt. A PROVIDER MAY NOT REQUEST OR RECEIVE PAYMENT OF ANY FEE OR CONSIDERATION UNTIL AND UNLESS:~~

(i) THE PROVIDER HAS SETTLED THE TERMS OF AT LEAST ONE DEBT

PURSUANT TO A SETTLEMENT AGREEMENT OR OTHER VALID CONTRACTUAL AGREEMENT EXECUTED BY THE INDIVIDUAL;

(ii) THE INDIVIDUAL HAS MADE AT LEAST ONE PAYMENT PURSUANT TO THAT SETTLEMENT AGREEMENT OR OTHER VALID CONTRACTUAL AGREEMENT BETWEEN THE INDIVIDUAL AND THE CREDITOR OR DEBT COLLECTOR; AND

(iii) THE FEE OR CONSIDERATION EITHER: BEARS THE SAME PROPORTIONAL RELATIONSHIP TO THE TOTAL FEE FOR SETTLING THE TERMS OF THE ENTIRE DEBT BALANCE AS THE INDIVIDUAL DEBT AMOUNT BEARS TO THE ENTIRE DEBT AMOUNT, IN WHICH CASE THE INDIVIDUAL DEBT AMOUNT AND THE ENTIRE DEBT AMOUNT ARE THOSE OWED AT THE TIME THE DEBT WAS ENROLLED IN THE SERVICE; OR IS A PERCENTAGE OF THE AMOUNT SAVED AS A RESULT OF THE SETTLEMENT. THE PERCENTAGE CHARGED CANNOT CHANGE FROM ONE INDIVIDUAL DEBT TO ANOTHER. THE AMOUNT SAVED IS THE DIFFERENCE BETWEEN THE AMOUNT OWED AT THE TIME THE DEBT WAS ENROLLED IN THE PLAN AND THE AMOUNT ACTUALLY PAID TO SATISFY THE DEBT.

~~(B) Total fees may be collected over no less than half of the length of the plan as estimated at the inception of the plan unless accelerated by the individual or until offers of settlement by creditors are obtained on at least half of the debts enrolled to provider.~~

~~(C) In no case shall aggregate fees exceed eighteen percent of the total principal amount of the debt.~~

(D) Notwithstanding ~~the other subparagraphs~~ SUBPARAGRAPH (A) of this paragraph (2), no debtor INDIVIDUAL who completes all of his or her obligations under the agreement may be charged fees such that those fees, when added to the aggregate of offers of settlement obtained by THE provider for the debtor, exceeds the principal amount of the debt.

~~(5) In no case shall aggregate fees exceed eighteen percent of the total principal amount of the debt.~~

(f) ~~Subject to adjustment of the dollar amount pursuant to section 12-14.5-232 (f),~~ If a payment to a provider by an individual under this part 2 is dishonored, a provider may impose a reasonable charge on the

individual, not to exceed the lesser of twenty-five dollars and the amount permitted by law other than this part 2.

SECTION 15. 12-14.5-226 (b) (1) and (b) (2), Colorado Revised Statutes, are amended to read:

12-14.5-226. Termination of agreements. (b) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual:

(1) Any money of the individual held in trust for the benefit of the individual. and

(2) ~~Sixty-five percent of any portion of the set-up fee received pursuant to section 12-14.5-223 (d) (2) that has not been credited against settlement fees.~~

SECTION 16. 12-14.5-228 (a) (2), (a) (3), and (a) (14), Colorado Revised Statutes, are amended to read:

12-14.5-228. Prohibited acts and practices. (a) A provider may not, directly or indirectly:

(2) ~~Settle a debt on behalf of an individual for more than fifty percent of the actual balance of the debt owed a creditor at the time of settlement, unless the individual assents to the settlement after the creditor has assented~~ WITHOUT THE INDIVIDUAL'S AGREEMENT TO THE SETTLEMENT TERMS PURSUANT TO A SETTLEMENT AGREEMENT OR OTHER VALID CONTRACTUAL AGREEMENT EXECUTED BY THE INDIVIDUAL;

(3) ~~Take a power of attorney that authorizes it to settle a debt, unless the power of attorney expressly limits the provider's authority to settle debts for not more than fifty percent of the actual balance of the debt owed a creditor at the time of settlement;~~

(14) Represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the federal internal revenue service; EXCEPT THAT, IF THE PROVIDER REPRESENTS THAT IT IS A NOT-FOR-PROFIT

ENTITY AND THE PROVIDER DOES NOT HAVE TAX-EXEMPT STATUS UNDER SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, THE PROVIDER SHALL STATE, IN A CLEAR AND CONSPICUOUS MANNER AND IN CLOSE PROXIMITY TO THE REPRESENTATION: "WE ARE NOT AN EDUCATIONAL, CHARITABLE, OR RELIGIOUS ORGANIZATION GRANTED TAX-EXEMPT STATUS BY THE INTERNAL REVENUE SERVICE."

SECTION 17. Repeal. 12-14.5-232 (f) and (g), Colorado Revised Statutes, are repealed as follows:

12-14.5-232. Powers of administrator - rules. (f) ~~The administrator, by rule, shall adopt dollar amounts instead of those specified in sections 12-14.5-202, 12-14.5-205, 12-14.5-209, 12-14.5-213, 12-14.5-223, 12-14.5-233, and 12-14.5-235 to reflect inflation, as measured by the United States bureau of labor statistics consumer price index for all urban consumers or, if that index is not available, another index adopted by rule by the administrator. The administrator shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least ten percent. The dollar amount shall be rounded to the nearest one hundred dollars, except that the amounts in section 12-14.5-223 shall be rounded to the nearest dollar.~~

(g) ~~The administrator shall notify registered providers of any change in dollar amounts made pursuant to subsection (f) of this section and make that information available to the public.~~

SECTION 18. 12-14.5-233 (a) (3), (a) (4) (B), (b), and (e), Colorado Revised Statutes, are amended to read:

12-14.5-233. Administrative and legal remedies. (a) The administrator may enforce this part 2 and rules adopted under this part 2 by taking one or more of the following actions:

(3) ~~Subject to adjustment of the dollar amount pursuant to section 12-14.5-232 (f),~~ Imposing on a provider or a person that has caused a violation a civil penalty not exceeding ten thousand dollars for each violation;

(4) Prosecuting a civil action to:

(B) Obtain restitution, ~~or A CIVIL PENALTY NOT TO EXCEED TEN THOUSAND DOLLARS PER VIOLATION,~~ an injunction, or other equitable relief; ~~or both;~~

~~(b) Subject to adjustment of the dollar amount pursuant to section 12-14.5-232 (f);~~ If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under paragraph (1) or (2) of subsection (a) of this section, the administrator OR COURT may impose a civil penalty not exceeding twenty thousand dollars for each violation.

(e) In determining the amount of a civil penalty to impose under subsection (a) or (b) of this section, the administrator OR THE COURT shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator OR THE COURT considers relevant to the determination of the civil penalty.

SECTION 19. The introductory portion to 12-14.5-234 (b), Colorado Revised Statutes, is amended to read:

12-14.5-234. Suspension, revocation, or nonrenewal of registration. (b) IN ADDITION TO THE REMEDIES OTHERWISE AVAILABLE UNDER THIS ARTICLE, the administrator may suspend, revoke, or deny renewal of a provider's registration if:

SECTION 20. 12-14.5-235 (c) (2), Colorado Revised Statutes, is amended to read:

12-14.5-235. Private enforcement. (c) Subject to subsection (d) of this section, an individual with respect to whom a provider violates this part 2 may recover in a civil action from the provider and any person that caused the violation:

(2) Except as otherwise provided in subsection (d) of this section, ~~and subject to adjustment of the dollar amount pursuant to section 12-14.5-232 (f);~~ with respect to a violation of section 12-14.5-217, 12-14.5-219 to 12-14.5-224, 12-14.5-227, or 12-14.5-228 (a), (b), or (d), the greater of the amount recoverable under paragraph (1) of this subsection (c) or five thousand dollars;

SECTION 21. 12-14-103 (2) (b) (V), Colorado Revised Statutes, is amended to read:

12-14-103. Definitions. As used in this article, unless the context otherwise requires:


(2) (b) "Collection agency" does not include:

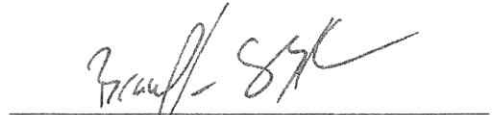
(V) Any nonprofit organization which, at the request of consumers, ~~performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors~~ DEBT-MANAGEMENT SERVICES PROVIDER OPERATING IN COMPLIANCE WITH OR EXEMPT FROM THE "UNIFORM DEBT-MANAGEMENT SERVICES ACT", PART 2 OF ARTICLE 14.5 OF TITLE 12, C.R.S.;

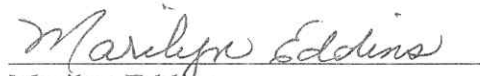
SECTION 22. Effective date - applicability. This act shall take effect July 1, 2011, and shall apply to conduct occurring on or after said date.

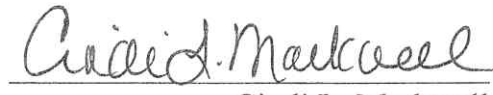
SECTION 23. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES


Brandon C. Shaffer
PRESIDENT OF
THE SENATE


Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES


Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED 11:13 am April 13, 2011


John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO